Yusof bin Sudin v Suruhanjaya Perkhidmatan Polis & Anor

HIGH COURT (MELAKA) — CIVIL SUIT NO 21-4 OF 1997
KN SEGARA J
5 JULY 2000

Civil Procedure *— Jurisdiction — Local jurisdiction — Plaintiff serving police force in Seremban dismissed — Action file in Melaka High Court — Whether case came within local jurisdiction of Melaka High Court*

The plaintiff was serving the police force in Seremban, Negeri Sembilan and was subsequently dismissed after disciplinary proceedings. He then filed a writ and statement of claim in the High Court at Melaka against the defendants. The question arose as to whether the case was one coming within the local jurisdiction of the High Court at Melaka.

Held, striking off the plaintiff's action:

The plaintiff's action was not one coming within the local jurisdiction of the High Court at Melaka and, therefore, it was not the court of competent jurisdiction to hear the case. To come within the local jurisdiction of the court, there must be compliance with s 23(1) of the Courts of Judicature Act 1964 in that: (i) the cause of action arose within the local jurisdiction of the High Court; (ii) the defendant or one of several defendants resides or has his place of business within the local jurisdiction of the High Court; (iii) the facts on which the proceedings are based exist or are alleged to have occurred within the local jurisdiction of the High Court; or (iv) any land the ownership of which is disputed is situated within the local jurisdiction of the High Court (see p 621B-D).

[Bahasa Malaysia summary

Plaintiff berkhidmat dengan pasukan polis di Seremban, Negeri Sembilan dan kemudiannya telah dipecat setelah prosiding tatatertib dijalankan. Beliau kemudiannya telah memfailkan satu writ dan pernyataan tuntutan di Mahkamah Tinggi di Melaka terhadap defendan-defendan. Persoalan timbul sama ada kes tersebut jatuh di dalam bidang kuasa tempatan Mahkamah Tinggi Melaka.

Diputuskan, membatalkan tindakan plaintif:

Tindakan plaintif bukan suatu yang timbul di dalam bidang kuasa tempatan Mahkamah Tinggi Melaka dan, oleh itu, ia bukan merupakan mahkamah yang mempunyai bidang kuasa yang kompeten untuk mendengar kes tersebut. Untuk jatuh di dalam bidang kuasa mahkamah, perlu ada pematuhan s 23(1) Akta Kehakiman Mahkamah 1964 di mana: (i) kausa tindakan timbul di

dalam bidang kuasa Mahkamah Tinggi; (ii) defendan atau seorang daripada beberapa defendan-defendan tersebut menetap atau mempunyai tempat berniaga di dalam bidang kuasa tempatan Mahkamah Tinggi; (iii) fakta-fakta yang menjadi asas prosiding tersebut wujud atau didakwa berlaku di dalam bidang kuasa tempatan Mahkamah Tinggi; atau (iv) mana-mana tanah yang dimiliki jika dipertikaikan terletak di dalam bidang kuasa tempatan Mahkamah Tinggi (lihat ms 621B–D).]

Notes

For cases on local jurisdiction, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 2997–2998.

Legislation referred to

Courts of Judicature Act 1964 ss 3, 20, 23(1)
Federal Constitution art 121

Ramzani bin Idris (*Aris Rizal Christopher Fernando & Co*) for the plaintiff.
Meor Hashimi bin Abdul Hamid (Federal Counsel, Melaka State Legal Adviser's Office) for the defendants.

KN Segara J: This case had been postponed on several earlier occasions for one reason or another, primarily at the request of the solicitors/counsel for the plaintiff. The case was eventually called for full trial on 5 July 2000 and counsel for the plaintiff, without any hesitation or qualms, requested for a postponement on the ground this court had decided, in Guaman Sivil No 21–7–96, on the issue of the local jurisdiction of the High Court, and this very same issue has again arisen in the present case. Incidentally, the counsel acting for the plaintiff in the case before me today is the very same counsel who acted for the plaintiff in Guaman Sivil No 21–7–96 which was disposed off on 16 May 2000. Counsel further advanced as a ground for postponement the fact that the solicitors for the plaintiff had written a letter dated 2 June 2000 to YAA Hakim Besar Malaya (requesting for a transfer of this case to the High Court Kuala Lumpur) and to which letter they had still not received a reply. It is with utmost regret that I must express my dismay and astonishment over the conduct of the solicitors for the plaintiff in urging YAA Hakim Besar to invoke his powers under s 20 of the Courts of Judicature Act 1964 ('the CJA'). Surely s 20, which deals with the distribution of business among judges of the High Court by the chief judge, is totally irrelevant to the issue of jurisdiction of the High Court under s 23(1) of the CJA! Furthermore, the very same solicitors have appealed against the decision (on jurisdiction) in Guaman Sivil No 21–7–96. Therefore, the letter to the chief judge must necessarily be interpreted as an attempt to pre-empt the decision of the Court of Appeal and such conduct must be deplored. With respect, the only solution, short of a successful appeal, is to have the action filed afresh in the appropriate High Court with competent local jurisdiction, based on the facts of the case. In the circumstances, the application for postponement is refused.

Briefly, the plaintiff herein filed a writ and statement of claim in the High Court at Melaka against the defendants claiming, amongst other things, for a declaration that his dismissal from the police force is unlawful, unconstitutional, void and of no effect, and that he is still an assistant superintendant of police in the Royal Malaysian Police Force and entitled to all the salaries, emoluments and benefits due as such assistant superintendant of police.

It is not disputed that the plaintiff was at all material times serving the police force in Seremban, Negeri Sembilan and the facts on which the disciplinaly proceedings were instituted are alleged to have occurred in Seremban. The defendants are in Kuala Lumpur. In the circumstances, is the High Court at Melaka the court of competent jurisdiction?

Counsel for the plaintiff wished to adopt the submissions he had made in Guaman Sivil No 21–7–96. I cannot do any better than what I have already said in my grounds of decision in Guaman Sivil No 21–7–96, which to date, remains unreported.

It is clear from art 121 of the Federal Constitution that there are two separate High Courts in Malaysia exercising distinct territorial jurisdiction over different geographical areas of the country. There is the High Court in Malaya and the High Court in Sabah and Sarawak. Each of the two High Courts have further distinct local jurisdictions assigned to them under s 3 of the CJA.

The local jurisdiction of the High Court in Malaya is the territory comprised in the states of Malaya, namely, Johore, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor, Terengganu and the Federal Territory of Kuala Lumpur.

The local jurisdiction of the High Court in Sabah and Sarawak is the territory comprised in the states of Sabah, Sarawak and the Federal Territory of Labuan.

Therefore, pursuant to s 23(1) of the CJA, the High Court in Malaya at Melaka shall have jurisdiction to try all civil proceedings where:

(a) the cause of action arose (in the state of Melaka);

(b) the defendant or one of several defendants resides or has his place of business (in the state of Melaka);

(c) the facts on which the proceedings are based exist or are alleged to have occurred (in the state of Melaka); or

(d) any land the ownership of which is disputed is situated (in the state of Melaka).

In this case before me, it is not disputed that:

(1) the plaintiff's cause of action did not arise in Melaka,

(2) the defendants do not reside in Melaka, or

(3) the facts on which the plaintiff's case is based did not occur in Melaka.

A I was given to understand from counsel for the plaintiff that it was the convenience of the plaintiff's solicitors, who were in Seremban, that led to the filing of this action at the Melaka High Court. With respect, convenience of solicitors can never be material to ground and invoke *local jurisdiction* of the High Court. I hold that unless a civil case can fall *within the local jurisdiction* of the High Court, it shall not be the court of competent B jurisdiction to hear it. To come within the local jurisdiction of the court there must be compliance with s 23(1) of the CJA in that:

(a) the cause of action arose *within the local jurisdiction* of the High Court;

(b) the defendant or one of several defendants resides or has his place of business *within the local jurisdiction* of the High Court;

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(c) the facts on which the proceedings are based exist or are alleged to have occurred *within the local jurisdiction* of the High Court; or

(d) any land the ownership of which is disputed is situated *within the local jurisdiction* of the High Court.

D In the above circumstances, I rule that the plaintiff's action herein is not one coming within the local jurisdiction of the High Court at Melaka and, therefore, this court is not the court of competent jurisdiction to hear the case.

The plaintiff's action is struck off. There shall be no order as to costs.

E *Plaintiff's action struck off.*

Reported by Joel Ng

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